8 Conclusion

In this paper we have examined the free movement of patients in the EU/EEA, in particular the right to financial coverage of cross-border treatment from many angles. We have examined both the existing framework regarding the subject as well as the case-law of the Court of Justice and the proposed framework which has yet to be negotiated.

In any case, the already existing framework is still applicable regarding emergency care and care received after obtaining prior authorisation for the treatment. In such cases the patient is entitled to full reimbursement for the cost incurred, or not having to bear any cost at all as the reimbursement may take place between the Member States.

In other circumstances, the right to reimbursement for costs incurred in regard to cross-border treatment is unclear and currently under reform.

The Court of Justice has established some principles which are clear in its rulings, but how they are to be applied in general by all Member Sates is still uncertain. First and foremost the Court has established that although the Member States have the competence to regulate the scope of their health care services they must nevertheless comply with the provisions of EU law, including internal market rules, such as the free movement principles. Thus who is insured, what treatment and expenses are covered and from which providers is essentially at the discretion of the Member States, as long as it does not entail unjustified barriers on free movement. This is in principle to be respected in the proposed Patient Mobility Directive.

Second the Court has established that patients are entitled to reimbursement for external care received in another Member State than in which they are insured, without obtaining prior authorisation, if they are entitled to the same or similar treatment under their home Member State's social security system. The reimbursement shall in this case be according to the tariffs of the home Member State, leaving the patient to bear any additional costs. This principle is codified in the proposed Patient Mobility Directive.

Third, the Court has established that any internal care, to which a patients are entitled in Member State A, their home Member State, they may also seek in Member State B, any other Member State, on the cost of Member State A. Still, reimbursement of such cost may be subject to prior authorisation. The criteria for obtaining such authorisation must be necessary, proportionate and non-discriminatory. This principle is for the most part codified in the proposed Patient Mobility Directive, whereas very strict conditions are set for a prior authorisation scheme. For such a scheme not to be in violation with the proposed Directive, the Member State in question must prove that the outflow of patients will, or is likely to,

undermine the financial stability of the public health care system. Under the Spanish proposal in the proposed Directive however this would never come into effect as that proposal only covers external care.[1]

The Court has not abolished the prior authorisation system of Article 20 of Regulation No 883/2004 (ex Articles 22(1)(c) and 22(2) of Regulation No 1408/71), on the contrary it implied that an alternative procedure should be applied, under which reimbursement for costs of cross-border health care is no longer a privilege granted by the competent institution, but a Treaty based right of patients which can only be limited under certain circumstances.[2] This is in coherence with the proposed Patient Mobility Directive, which establishes a new mechanism, to be applied parallel to the already existing mechanism of Regulation No 883/2004 (ex Regulation No 1408/71), under which the patient is entitled to reimbursement for treatment received in another Member State than in which the patient is insured, up to the level the patient would have been entitled had the treatment been provided in the patient's home Member State.

For the most part the proposed Patient Mobility Directive codifies the principles set out by the Court of Justice, with the exemption that is goes a bit further in setting out conditions for the Member States to limit the patient rights to cross-border health care. It may also be open to interpretation whether or not a patient can seek reimbursement, under the provisions of the proposed Directive, for treatment received in a private establishment in another Member State than in which the patient is insured, when they are not entitled to treatment from such a provider in the Member State of affiliation. This however would not respect the discretion the Member States hold to organise their health care systems, which the proposed Patient Mobility Directive is indeed supposed to do. Aside from this, the proposed Patient Mobility Directive seems to be a good settlement between the ever expanding internal market of EU law and the Member States trying to preserve their discretion over their health care systems which are financed through the public budget.

To conclude this work, it is my opinion that although coordination is desirable and patient mobility in the EEA should be a right and not a privilege only to be granted under certain circumstances, caution must be taken as long as funding and delivery of health care is on a sole responsibility of the Member States. It is true that a borderless European market and social space may benefit both the Member States and the Union citizens, but nonetheless it is

[1] De Benito (2010, April 23).
[2] Van der Mei (2003) 288.

of most importance that this does not endanger the principle of health care services accessible to all.

Whatever the future might hold in the matters of European health care it is clear that the field is currently evolving and under big reform, which makes it an exciting area of law to explore and follow.